

立法會
Legislative Council

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**Paper for the House Committee meeting
on 12 November 1999**

**Report of the Bills Committee on
Protection of Wages on Insolvency (Amendment) Bill 1999**

Purpose

This paper reports on the deliberations of the Bills Committee on the Protection of Wages on Insolvency (Amendment) Bill 1999 (the Bill).

Background

2. Under the Protection of Wages on Insolvency Ordinance, Cap. 380 (the Ordinance), an employee who is owed wages, wages in lieu of notice or severance payment by an insolvent employer may apply for ex-gratia payment from the Protection of Wages on Insolvency Fund (the Fund). The Fund is financed mainly by an annual levy of \$250 on each business registration certificate.

3. Severance payment from the Fund is at present subject to a limit of \$50,000, plus 50% of the excess entitlement. Severance payment entitlement is calculated in accordance with section 31G of the Employment Ordinance (Cap. 57) and is based essentially on the last month's wages of the applicant before termination of service, or, if the employee so chooses, the average wage over the preceding 12-month period.

The Bill

4. The Bill proposes that where an employee has a wage reduction in the 12 months immediately before he is dismissed or laid off, calculation of the ex-gratia severance payment from the Fund will be based on an employee's wage level before wage reduction, or a wage level in between the employee's reduced wages and his pre-reduction wages, if the employer has given a written undertaking to that effect before wage reduction.

5. The Bill also provides a transitional arrangement for employers who have given a verbal undertaking before commencement of the Bill, to confirm such undertaking in writing within two months after commencement of the Amendment Ordinance.

The Bills Committee

6. At the House Committee meeting on 23 April 1999, a Bills Committee was formed to study the Bill. Chaired by Hon Eric LI Ka-cheung, the Bills Committee has held three meetings with the Administration to discuss the Bill.

7. The membership list of the Bills Committee is in **Appendix I**.

Deliberations of the Bills Committee

8. Discussion of the Bills Committee has mainly focused on the requirement for a written undertaking by the employer and whether the proposal will add financial burden on employers in the form of increased levy on business registration. Members have also expressed concern about the calculation of severance payment entitlements for cases where wage adjustment takes place more than once during the 12 months immediately before termination of employment.

Written undertaking by employer

9. Members of the Bills Committee have divided views over the proposed requirement for a written undertaking by the employer. Some members of the Bills Committee have raised strong objection to the proposal. These members consider the requirement unreasonable and difficult to implement, as few employers, especially those in small business, actually give written undertakings on matters relating to the protection of employee benefits. Since verbal undertakings are recognized under the Employment Ordinance and accepted by the Labour Tribunal in adjudicating labour disputes, these members are concerned that the proposed requirement for employer's written undertaking will lead to inconsistencies and set a bad precedent for labour legislation.

10. The Administration has explained that the Bill is intended to provide better protection to employees who have their wages reduced and are owed severance payments by their insolvent employers. In view of the practical difficulties in locating insolvent employers to verify their verbal undertakings, the Administration has proposed in the Bill the requirement for an employer's written undertaking in order to provide certainty for the protection of employees' benefits. The arrangement can also save employees' time and effort in proving their entitlements to the Labour Department. As the proposed calculation of severance payments under the Bill is more favorable than that provided in the Employment Ordinance, and since payments

made from the Fund are public monies, the Labour Department has a responsibility to ensure that the scheme will not be abused. Members of the Liberal Party have expressed support for the Administration's proposal. These members consider it prudent to put in place a fair system to prevent abuse of the Fund.

11. Some other members of the Bills Committee disagree with the Administration. A member has pointed out that a written undertaking cannot effectively eliminate abuses, as an employer can still collaborate with the employees even with a written undertaking. Some members consider that the present requirement for applicants to produce documentary proof such as their wage record over the preceding 12 months will suffice. They are strongly of the view that the requirement for a written undertaking is impractical and that it is wrong in principle to deny an employees' right on the ground that his employer has not confirmed his undertaking in writing.

12. In view of the grave concern expressed by some members of the Bills Committee, the Administration has further consulted the Labour Advisory Board (LAB) and the Fund Board. The Administration has subsequently decided to move a Committee stage amendment to remove the requirement for employer's written undertaking, i.e. both verbal and written undertakings by employers will be recognized by the Fund Board. The proposed amendment is welcomed by most members of the Bills Committee, while members belonging to the Liberal Party reserve their position on the proposed amendment.

Financial position of the Fund

13. Members belonging to the Liberal Party have expressed concern about the deficit of \$185.3 million of the Fund in 1998-99. Given the current balance of about \$575.5 million of the Fund and the increased number of applications, these members are worried that the Fund may be exhausted in a few years. They are therefore concerned that the scheme may add additional financial burden on employers in the form of increased levy for business registration. In this connection, they ask whether Government will subsidize the operation of the proposed scheme.

14. The Administration has responded that the Fund's financial position is healthy, and there is no plan to increase the levy on business registration for the time being. As the Fund is basically a collective insurance scheme of the trade, Government will not inject funds to the scheme. The Administration has further advised that there had been surpluses under the Fund since it came into operation in 1985, and a deficit was recorded for the first time in 1997-98. Nevertheless, the annual levy income of the fund is rather stable, ranging from \$170 million-\$180 million in the past few years. The number of applications for ex-gratia payments from the Fund has also stabilized in recent months following a record number of applications in the first quarter of 1999. Moreover, the ex-gratia payments made from the Fund will be recovered from the assets of the insolvent companies.

Several wage adjustments within 12 months

15. Some members have asked how severance payments will be calculated if wage adjustment takes place more than once within the 12 months before termination of employment. A member has quoted an example where an employee has two reductions and one wage increase within the 12 months. In this connection, the Administration has advised that if several wage adjustments have occurred during the preceding 12 months, the most recent wage reduction (and the written undertaking) will be taken for calculation of the employee's severance payment. This is in line with the principle that a new contract supercedes the previous contract. Alternatively, an employee can opt for calculation based on his last month's wages before termination of employment, or the average wage over the preceding 12 months, in accordance with the Employment Ordinance.

16. Some members consider that flexibility should be provided for in the Bill in the calculation of ex-gratia severance payments where several wage adjustments have occurred within the 12 months. A member has suggested that the highest wages specified in any undertaking should be adopted for calculation in these cases. The suggestion is supported by other members of the Bills Committee.

17. In view of the Bills Committee's suggestion, the Administration has further consulted the LAB and the Fund Board. The Administration has subsequently accepted members' views and agreed to use the highest wage level specified in any of the undertakings given by the employer during the preceding 12 months for calculation of ex-gratia severance payments from the Fund. The Administration will move Committee stage amendment to this effect.

Committee stage amendments

18. The Committee stage amendments proposed by the Administration are in **Appendix II**. The Bills Committee has not proposed any amendments.

19. The Bills Committee has noted the Democratic Party's proposal that there should be no requirement of any employer's undertaking, verbal or written, for ex-gratia payment from the Fund. While some members agree that the proposal will further improve the protection to employees, the Bills Committee consider that the present Bill is already an improvement over existing provisions and should be enacted as soon as possible. In this connection, a member has indicated that he will move the CSA in his own name.

Recommendation of the Bills Committee

20. The Bills Committee supports early resumption of the Second reading debate of the Bill.

Advice sought

21. Members are requested to note the Bills Committee's recommendation in paragraph 20.

Legislative Council Secretariat
10 November 1999

**Bills Committee on
Protection of Wages on Insolvency (Amendment) Bill 1999**

Membership List

Hon Eric LI Ka-cheung, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, JP
Hon HO Sai-chu, SBS, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon LEE Kai-ming, SBS, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han
Hon LAU Chin-shek, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo

Total : 13 Members

Date : 21 July 1999

PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>In the proposed section 16(2B) -</p> <p>(a) in paragraph (a)(ii), by deleting "in writing";</p> <p>(b) by deleting paragraph (d)(i) and (ii) and substituting -</p> <p style="padding-left: 40px;">“(i) “the undertaking” in paragraph (a)(B) shall be construed to mean the undertaking which is the most favourable to the applicant among those given to him during that period;</p> <p style="padding-left: 40px;">(ii) “the wage reduction” in paragraph (c)(i), (ii) and (iii) shall be construed to mean the wage reduction in respect of the applicant’s highest wage level in that period.”.</p>
3	<p>By deleting subclause (1).</p>